

OK & sentu EST 2/11/07

### REMARKS

Claims 27 and 49 have been amended. Claims 27, 49, 64, 67, 68, 71-74, 76, 77, 79, 81-86, 89-91, 94, 96, 97, 102, 104, 105, 110, 111, 114, 115, 119, 121-123, 126, 128, 129, 131-135, 138, 139, 144-168, 170, 172, and 174-178 are pending in the instant application. Support for the amendments to the claims can be found in the specification at, for example, page 5, lines 7-39; page 5, line 45 to page 6, line 3; page 21, lines 28-33; and page 22, line 37 to page 23, line 4 and page 23, lines 16-21. The objections and rejections set forth in the Office Action have been overcome by amendment or are traversed by argument below.

**1. Rejection of claims 27, 49, 64, 67, 71-74, 76, 77, 79, 81, 83-86, 89-91, 94, 96, 97, 102, 104, 105, 110, 114, 115, 119, 121-123, 126, 128, 129, 131-135, 138, 139, 144-167, 170, 172, and 174-178 under 35 U.S.C. § 102**

The Office Action maintains a rejection of claims 27, 49, 64, 67, 71-74, 76, 77, 79, 81, 83-86, 89-91, 94, 96, 97, 102, 104, 105, 110, 114, 115, 119, 121-123, 126, 128, 129, 131-135, 138, 139, 144-167, 170, 172, and 174-178 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,695,953 (the '953 patent), which the Action asserts has an effective priority date of September 12, 1988. The Action states that while Applicants' arguments in the response to the Office Action mailed July 29, 2005 are persuasive that the purified protein of the '953 patent was a mixture of two TNF-BP's of different lengths, the pending claims encompass nucleic acid molecules encoding more than one form of soluble TNF-BP, including the claimed nucleic acid molecules of the '953 patent. The Action also states that "[e]ven though [the '953 patent] did not disclose a nucleic acid molecule that would encode a TNF-BP of SEQ ID NO: 4 of the instant application, the Examiner is barred from allowing claims to the nucleic acid in the instant application." Finally, the Action suggests that if the claims were amended to distinguish over the claimed nucleic acid molecules of the '953 patent, the rejection would be withdrawn.

Applicants have amended claim 27 to recite an isolated nucleic acid molecule comprising the nucleotide sequence as set forth in SEQ ID NO: 3, wherein the isolated nucleic acid molecule does not further comprise residues 88-120 or residues 604-633 of the nucleotide sequence of SEQ ID NO: 1. Applicants have also amended claim 49 to recite an isolated nucleic acid molecule encoding a polypeptide having the ability to bind TNF, wherein said polypeptide comprises the amino acid sequence as set forth in SEQ ID NO: 4, and wherein said polypeptide does not comprise residues 30-